

Message Text

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ORIGIN OES-06

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NRC-05 DODE-00 ERDA-05 FEA-01 /103 R

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FM SECSTATE WASHDC

TO AMEMBASSY MADRID PRIORITY

C O N F I D E N T I A L STATE 175506

E.O. 11652: GDS

TAGS: PARM, TECH, SP

SUBJECT: SYMINGTON AMENDMENT -- NUCLEAR REPROCESSING

REF: STATE 162938

1. FOLLOWING IS SUBSTANCE OF SYMINGTON AMENDMENT TO FOREIGN ASSISTANCE ACT AND A PRELIMINARY ANALYSIS OF ITS PROBABLE EFFECT. FULL TEXT OF AMENDMENT BEING POUCHED.

2. SYMINGTON AMENDMENT PROHIBITS PROVISION OF ECONOMIC OR SECURITY ASSISTANCE OR EXTENDING MILITARY CREDITS OR GUARANTEES TO ANY COUNTRY WHICH DELIVERS OR RECEIVES NUCLEAR REPROCESSING OR ENRICHMENT EQUIPMENT MATERIALS, EQUIPMENT, OR TECHNOLOGY, UNLESS: (A) SUPPLIER AND RECIPIENT HAVE AGREED "TO PLACE ALL SUCH EQUIPMENT, MATER-
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IALS, AND TECHNOLOGY, UPON DELIVERY, UNDER MULTILATERAL

AUSPICES AND MANAGEMENT WHEN AVAILABLE", AND (B) RECIPIENT HAS AGREED WITH IAEA TO PLACE TRANSFERRED ITEMS AS WELL AS ALL OF RECIPIENT'S NUCLEAR FUEL AND FACILITIES UNDER IAEA SAFEGUARDS.

PRESIDENT MAY, BY EXECUTIVE ORDER, WAIVE THIS SECTION AND FURNISH ASSISTANCE OTHERWISE PROHIBITED BY AMENDMENT IF HE FIRST CERTIFIES TO CONGRESS THAT TERMINATION WOULD HAVE SERIOUS ADVERSE EFFECT ON VITAL U.S. INTEREST, AND THAT HE HAS RECEIVED "RELIABLE ASSURANCES" THAT COUNTRY IN QUESTION WILL NOT ACQUIRE OR DEVELOP NUCLEAR WEAPONS. SUCH A WAIVER MAY BECOME EFFECTIVE NO SOONER THAN 30 DAYS AFTER CERTIFICATION TO CONGRESS. AMENDMENT STATES THAT WAIVER MAY BE OVERRIDDEN BY JOINT RESOLUTION. (JOINT RESOLUTION MAY BE VETOED BY PRESIDENT.)

3. SYMINGTON AMENDMENT CONTAINS SOME RESIDUAL AMBIGUITIES. LANGUAGE OF AMENDMENT INDICATES THAT PROHIBITION WILL HAVE PROSPECTIVE APPLICATION WITH RESPECT TO TRANSFERS OCCURRING AFTER ENACTMENT (INCLUDING TRANSFERS PURSUANT TO AGREEMENTS ENTERED INTO IN THE PAST). HOWEVER, IT IS UNCLEAR WHAT WOULD CONSTITUTE AN AGREEMENT TO PLACE A FACILITY UNDER "MULTINATIONAL AUSPICES AND MANAGEMENT WHEN AVAILABLE", AND ALSO UNCERTAIN WHETHER THE REQUIREMENT TO PLACE ALL NUCLEAR FUEL AND FACILITIES UNDER IAEA SAFEGUARDS MEANS ALL EXISTING FACILITIES OR ALL FUTURE FACILITIES.

4. DEPARTMENT BELIEVES LAW IS CLEAR THAT TRANSFERS WHICH TOOK PLACE BEFORE AMENDMENT BECAME LAW DO NOT TRIGGER ITS PROVISIONS. THIS MAKES MOOT QUESTION OF WHETHER SPAIN'S RESEARCH REPROCESSING EQUIPMENT WOULD BE INCLUDED UNDER LAW.

5. DEPARTMENT REPEATING REFTTEL ON PROPOSED NUCLEAR AMENDMENTS TO ERDA APPROPRIATIONS BILL. KISSINGER

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